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STATE OF SOUTH CAROLINA

(Caption of Case)

State Universal Service Support of Basic Local
Service Included in a Bundled Service Offering or
Contract Offering

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 326 - C

(Please type or print)

Submitted by: Susan S. Masterton

SC Bar Number: 0

Address: 315 South Calhoun, Suite 500

Telephone: 850-599-1563

Tallahassee, FL 32301

Fax: 850-878-0777

Other:

Email: susan.masterton@centurylink.com

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Susan S. Masterton
Senior Counsel



FLTLHZ0501-507
315 S. Calhoun St., Suite 500
Tallahassee, FL 32301
Tel: 850.599.1560

February 17, 2010

VIA E-FILING

Charles L.A. Terreni, Esquire
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29211

RE: State Universal Service Support of Basic Local Service Included in a Bundled Service
Offering or Contract Offering
Docket No. 2009-326-C

Dear Mr. Terreni:

Enclosed please find the Post-Hearing Brief and Proposed Order filed on behalf of United Telephone Company of the Carolinas d/b/a CenturyLink in the above referenced docket. Copies have been served on all parties of record in accordance with the enclosed certificate of service.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

Susan S. Masterton

and

Scott Elliott, Esq., Elliott and Elliott, P.A.

Counsel for CenturyLink

SSM/rc

cc: All Parties of Record w/enc.

CERTIFICATE OF SERVICE

The undersigned employee of CenturyLink does hereby certify that she has served below listed parties with a copy of the document(s) indicated below via electronic mail and by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: State Universal Service Support of Basic Local Service
Included in a Bundled Service Offering or Contract Offering

DOCKET NO.: 2009-326-C

PARTIES SERVED:

Benjamin P. Mustian
Willoughby & Hoefler, P.A.
Post Office Box 8416
Columbia, SC 29202
bmustian@willoughbyhoefler.com

John M.S. Hoefer
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202-8416
jhoefer@willoughbyhoefer.com

Bonnie D. Shealy
Robinson, McFadden & Moore, P.C.
 Post Office Box 944
 Columbia , SC 29202
bshealy@robinsonlaw.com

Frank R. Ellerbe, III
Robinson, McFadden & Moore, P.C.
 Post Office Box 944
 Columbia, SC 29202
fellerbe@robinsonlaw.com

Burnet R. Maybank III
Nexsen Pruet, LLC
 1230 Main Street, Suite 700
 Columbia, SC 29202
bmaybank@nexsenpruet.com

Bruce Hurlbut
Windstream Communications, Incorporated
4001 Parham
Little Rock, AR 72212
bruce.hurlbut@windstream.com

John. J. Pringle, Jr
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC 29202
jpringle@ellislawhorne.com

M. John Bowen, Jr.
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29211
jbowen@mcnair.net

Margaret M. Fox
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29211
pfox@mcnair.net

Nanette S. Edwards
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
nsedwar@regstaff.sc.gov

Patrick W. Turner
BellSouth Telecommunications,
Incorporated d/b/a AT&T South Carolina
1600 Williams Street, Suite 5200
Columbia, SC 29201
pt1285@att.com

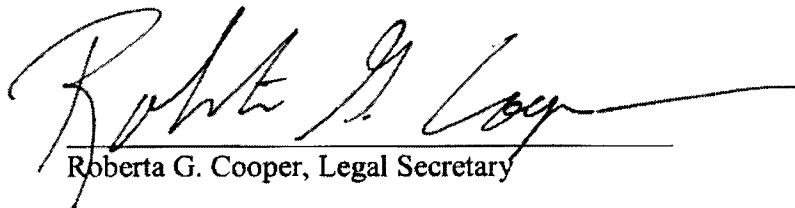
Steven W. Hamm
Richardson Plowden and Robinson, P.A.
Post Office Drawer 7788
Columbia, SC 29202
shamm@richardsonplowden.com

Thomas J. Navin
Wiley Rein, LLP
1776 K. Street
Washington, D.C. 20006
tnavin@wileyrein.com

William R Atkinson
Sprint Communications Company L. P.
233 Peachtree Street
Suite 2200
Atlanta, GA 30303
Bill.Atkinson@sprint.com

DOCUMENT: United Telephone Company of The Carolinas, LLC d/b/a
CenturyLink's Post-Hearing Brief and Proposed Order

February 17, 2010



Roberta G. Cooper, Legal Secretary

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2009-326-C

**State Universal Service Support of Basic Local Service Included in a Bundled
Service Offering or Contract Offering**

**United Telephone Company of the Carolinas, LLC d/b/a CenturyLink's
Post-Hearing Brief**

Filed: February 17, 2010

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**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2009-326-C

IN RE:)	UNITED TELEPHONE COMPANY
)	OF THE CAROLINAS, LLC d/b/a
State Universal Service Support of Basic)	CENTURYLINK'S POST-
Local Service Included in a Bundled)	HEARING BRIEF
Service Offering or Contract Offering)	

In accordance with the direction of the Public Service Commission of South Carolina ("Commission") at the November 20, 2009 hearing in this docket, United Telephone Company of the Carolinas, LLC d/b/a CenturyLink ("CenturyLink") hereby submits its Post-hearing Brief in this matter.¹ CenturyLink's Proposed Order is being filed separately to accompany this Post-hearing Brief.

I. Introduction and Summary

The sole issue before the Commission in this proceeding is whether carriers of last resort (COLRs)² should continue to receive state universal service support for basic local service included in a bundled service or contract offering.³ State and federal law and regulations related to universal service support the continuation of this support. In addition, the continuation of support for basic local service included in bundled and contract offerings is necessary for COLRs to continue to meet their obligation to provide

¹ Citations to the Hearing Transcript will be noted in this Post-hearing Brief as "Tr." followed by the page and line numbers.

² Throughout this brief the term "COLR" shall include CenturyLink, Windstream and the SCTC.

³ The title of this docket uses the phrase "basic local service." S.C. Code Ann. § 58-9-280(E) refers to the term "basic local exchange telephone service" which is defined in S.C. Code Ann. § 58-9-10(9). The Commission's Administrative Guidelines similarly define the term "basic local exchange telecommunications services." CenturyLink will use the term "basic local service" interchangeably with the similar terms used in the statute and the Administrative Guidelines.

service to all customers in their service areas at reasonable and affordable rates. Therefore, the Commission should affirm that basic local service provided as part of bundled or contract offerings should continue to receive state USF support. In reaching this conclusion the Commission should find that:

- CLECs have failed to meet their burden of proof that state USF support for basic local service provided as part of bundled or contract offerings should be discontinued;
- Providing support for basic local service included in bundled or contract offerings is consistent with state and federal law and with the Commission's orders establishing the state USF;
- The function and costs of basic local service remain the same whether it is provided on a stand alone basis or as part of bundled or contract offering; and
- Rural customers would be harmed if USF support were removed from access lines that include basic local service as part of a bundle.

II. Background

A. Statement of the Case

This docket originated as a result of a letter submitted by the Office of Regulatory Staff (ORS) and filed with the Commission on May 28, 2009, with the concurrence of the South Carolina Cable Television Association (SCCTA) and the South Carolina Telephone Coalition (SCTC). According to the letter, as a compromise of legislation proposed during the 2009 session of the General Assembly, these entities agreed to ask the Commission to consider whether basic local service included in a bundled offering or a contract offering was eligible for support from the state Universal Service Fund. The

ORS, SCCTA and SCTC agreed that this issue should be considered separately from other pending issues in the Commission's generic universal service docket.⁴ Testimony in this separate docket to address the bundled service issue has been filed by CenturyLink, SCTC, Windstream South Carolina, LLC ("Windstream"), ORS and the SCCTA, Competitive Carriers of South, Inc., tw telecom of south carolina, llc, Nuvox Communications, Inc, and Sprint Nextel Corporation (referred to collectively as "CLECs").

B. Background of USF in South Carolina

Competition for local telecommunications service in South Carolina was first introduced through legislation in 1996.⁵ As part of that legislation, the Commission was directed to establish a state universal service fund in furtherance of "South Carolina's commitment to universally available basic local exchange service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs."⁶ Under the statute, the universal service fund is specifically is specifically designed for "distribution to carriers of last resort."

Beginning in 1997 the Commission has held several proceedings to develop the state universal service fund as required by the legislation. The first proceeding established the initial size of the USF, directed by Section 58-9-280(E)(4) to be "the sum of the difference, for each carrier of last resort, between its costs of providing basic local

⁴ *In Re: Proceedings to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 1997-239-C ("Generic USF Docket").

⁵ The enactment of South Carolina's local service deregulation laws was coincident with the enactment of the federal Telecommunications Act of 1996, 47 U.S.C. §§ 152 et seq.

⁶ S.C. Code Ann. § 58-9-280(E). S.C. Code Ann. § 58-9-10(17) defines the term "universal service" to mean "the providing of basic local exchange telephone service, at affordable rates, upon reasonable request, to all residential and single-line business customers within a defined service area."

exchange services and the maximum amount it may charge for such services.”⁷ The second proceeding determined the appropriate cost models and the sizing of the fund based on the costs derived from the models.⁸ In the third proceeding, the Commission resolved various outstanding issues related to the fund and established a “phased-in” implementation of the fund.⁹ In the first phase (effective October 1, 2001), the Commission ordered all ILECs to reduce their intrastate access charges by 50% and allowed recovery of these reduced revenues from the fund.¹⁰ In the second and third phases, the Commission set forth a process where COLRs could continue to request additional revenue neutral state USF support in exchange for reductions in rates that contain implicit subsidies. Subsequent to the order establishing the guidelines, and in accordance with the phased-in approach adopted by the Commission, the Commission has considered petitions from various COLRs for specific reductions in rates for services that provide implicit support in exchange for additional recovery from the USF fund.¹¹ At this time, the total distributions from the fund are around 15% of fund’s maximum size. (Oliver Testimony, Tr. 285, at lines 1-3)

In May 2008, the Commission issued an order in Docket No. 1997-239-C indicating that it intended to update the methodology for performing cost studies for the universal service fund. Subsequent to that order, various parties filed motions related to the scope of that proceeding. Currently, the SCCTA’s Motion Requesting Review of

⁷ Generic USF Docket, Order No. 97-753, issued 9-3-97.

⁸ Generic USF Docket, Order No. 98-322, issued 5-6-98.

⁹ Generic USF Docket, Order No. 2001-419, issued 6-6-01. The Commission subsequently approved final Administrative Guidelines to govern implementation of the fund in Order No. 2001-996, issued 10-10-01.

¹⁰ Order No. 2001-419 at p. 33.

¹¹ See, e.g., Generic USF Docket Order No. 2003-215, approving additional rate reductions and commensurate state USF support for certain companies represented by the SCTC; Order No. 2004-452, approving further rate reductions and commensurate state USF support for certain companies represented by the SCTC; and Order No. 2004-573, approving additional rate reductions and commensurate state USF funding for United Telephone Company of the Carolinas.

Additional USF Issues and the SCTC's Motion to Dismiss are pending.¹² In responding to the joint letter to consider the bundled offerings issue, the Commission indicated that it would defer these other pending issues until the resolution of the issue that is the subject of this docket.

III. Argument

A. *Burden of proof*

At the hearing, counsel for CenturyLink asserted that the CLEC parties had the burden of proof in this case.¹³ (Tr. 13, lines 17 - 19) The Commission declined to make a ruling on this issue at the hearing and asked the parties to address the issue in their briefs. (Tr. 61, lines 8-10 and 18-22)

Under long standing principles of evidentiary and administrative law, the party asserting the affirmative of an issue has the burden of proof.¹⁴ In this case, it is the CLEC parties who are seeking an affirmative order from the Commission that basic services included as part of bundled or contract offerings are not eligible for support from the South Carolina USF.¹⁵ Since basic services included as part of bundled or contract offerings currently do receive USF support, as testified to by all of the COLR parties and the ORS, the CLECs are seeking an affirmative change to the status quo and, therefore, bear the ultimate burden of proof in this proceeding. To meet this burden, the CLECs must establish by a preponderance of the evidence that basic services provided as part of bundled or contract offerings are not entitled to state USF support. The CLECs have

¹² The issue of whether support should be provided for basic service included in bundled or contract offerings is one of several issues raised in the CLECs' Motion for Review of Additional USF Issues filed on July 3, 2008 in Docket No. 1997-239-C.

¹³ The issue initially arose in the context of a discussion of the order of witnesses.

¹⁴ 2 Am. Jur. 2d Administrative Law §354. The burden of proof includes the both the concept of the "burden to go forward" and the "burden of ultimate persuasion." Id. at §355.

¹⁵ See footnote 11, *supra*. CLECs asked the Commission consider this issue in their July 3, 2008 Motion for Review of Additional Issues.

failed to meet this burden. They have offered no factual evidence that supports their position that the current practice, implemented in accordance with the Commission's Orders and Guidelines establishing the state USF, should be changed to exclude basic local service when it is provided as party of a bundled or contract offering. In addition, to the extent the CLECs case rests on legal rather than factual arguments, they also have failed to establish a reasoned basis for the Commission to alter the status quo.

In contrast, as set forth fully in this Brief, CenturyLink, the other COLR witnesses and the ORS have provided more than sufficient reasons, on the basis of both the facts and the law, for the Commission to reject the CLECs request to change the current practice and to continue to allow basic local service included as part of bundled or contract offerings to receive USF support.

B. Providing support for basic local service provided as part of a bundle is consistent with South Carolina and federal law

1. South Carolina Statutes

As set forth in Section 58-280(E), the Commission was required to “establish a universal service fund (USF) for distribution to carrier(s) of last resort.” As set forth in the statute, the purpose of the USF is to further the state’s “commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs.” Under the statute, the Commission was required to adopt guidelines for the fund that are not “inconsistent with applicable federal law.” The meanings of the terms “basic local exchange telephone service” and “carrier of last resort” are set forth in S.C. Code Ann. Section 58-9-10(9) and (10), respectively.

“Basic local exchange telephone service” means:

for residential and single-line business customers, access to basic voice grade local service with touchtone, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent)

“Carrier of last resort” is defined as:

a facilities-based local exchange carrier, as determined by the commission, not inconsistent with the federal Telecommunications Act of 1996, which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service area. Initially, the incumbent LEC must be a carrier of last resort within its existing service area

CenturyLink, an incumbent LEC as defined in Section 58-9-10(11), is a COLR in its service territory under the statute.

Until bundled services were deregulated in 2005, there appeared to be no question that access lines that were included as part of then-regulated bundles of services were eligible for USF funding. In fact, Section 58-9-280(I) (which was enacted at the same time as the provision creating the USF), authorizes incumbent LECs to bundle services in response to competition. In 2005, the General Assembly enacted S.C. Code Ann. § 58-9-285, removing the Commission’s authority to regulate “bundled offerings” or “contract offerings” specifically related to the “terms, conditions, rates or availability of service.”¹⁶

¹⁶ Under the statute, for a qualifying LEC, a “bundled offering” defined as:

(1) “Bundled offering” means:

(a) for a qualifying LEC, an offering of two or more products or services to customers at a single price provided that:

The deregulation implemented through this provision appears to form the sole basis for the CLECs' arguments that bundled offerings or contract offerings are not eligible to receive universal service support.

A careful reading of the statutes belies the CLECs' reading of Section 58-9-285. First, there is nothing in Section 58-9-285 that specifically states that bundled offerings or contract offerings will no longer be eligible for universal service support as a result of deregulation. To the contrary, Section 58-9-285 explicitly states that "Nothing in this section affects the commission's jurisdiction over distributions from the USF pursuant to Section 58-9-280(E)." The plain meaning of the statute indicates that the General Assembly did not intend to change the way the commission was distributing USF under the various orders that had been rendered at the time the statute was adopted (which the General Assembly must be presumed to have known). Had the General Assembly meant for the Commission to make the change that the CLECs now argue is mandated by the statute, it could have come right out and said so, but it didn't.¹⁷

That the General Assembly could remove universal service support explicitly if it wanted to is made plain by the recent enactment of the Customer Choice and Technology Investment Act of 2009 (HB 3299) which removes USF for any ILEC that elects deregulation (and relief from its COLR obligations) for all its retail services, including

-
- (i) the bundled offering must be advertised and sold as a bundled offering at rates, terms, or conditions that are different than if the services are purchased separately from the LEC's tariffed offerings;
 - (ii) each regulated product or service in the offering is available on a stand-alone basis under a tariff on file with the commission; and
 - (iii) the qualifying LEC has a tariffed flat-rated local exchange service offering for residential customers and for single-line business customers on file with the commission that provides access to the services and functionalities set forth in Section 58-9-10(9).

A "contract offering" is defined as:

- (2) "Contract offering" means any contractual agreement, memorialized in writing, by which a qualifying LEC or a qualifying IXC offers any tariffed product or service to any customer at rates, terms, or conditions that differ from those set forth in the qualifying LECs or qualifying IXCs tariffs.

¹⁷ See, 73 Am. Jur. 2d Statutes § 123 which discusses the general principle of statutory construction that courts (on in this case the Commission) "may not, by construction, insert words or phrases into a statute."

stand alone basic local exchange service (except for certain grandfathered lines).¹⁸ Upon a LEC making this election, the statute provides for a phase down of the USF withdrawals until “the LEC is no longer entitled to withdraw any funds” from the state USF.¹⁹

As SCTC’s witnesses point out, this recent legislation is the first time that the phrase “stand-alone single-line basic residential line” is defined in the statutes, yet this concept seems to underpin the CLECs belief that only stand-alone basic service is eligible for USF support. (Brown Surreply Testimony, Tr. 183, lines 22-24; Oliver Surreply Testimony, Tr. 303, lines 8-10) However, the General Assembly clearly did not intend to mandate the availability of USF support to stand-alone residential lines only, as evidenced by its statement in Section 58-9-576(C)(11) that:

For any LECs that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF.

The General Assembly has had two opportunities since the original enactment of the law establishing the state USF to determine that bundled offerings and contract offerings should not be eligible for USF support, but it has declined to make such a determination on each occasion. Clearly, there is nothing in the statutes that mandates a determination by this Commission that bundled lines are not eligible for state USF support.

¹⁸ The legislation is codified at S.C. Code Ann. § 58-9-576 (C).

¹⁹ S.C. Code Ann. § 58-9-576 (C)(8)(b). Paragraph (c) provides that an electing LEC may petition the Commission to continue to receive funds for stand-alone residential lines that were in service prior to the LEC’s election of deregulation and remain in service after deregulation.

The CLECs' case apparently turns on the requirement in Section 58-9-280(E)(4) that the Commission is to determine the amount of USF support by subtracting the "maximum rate" for "basic local exchange telephone service" from the costs of providing the service. The CLECs argue that under Section 58-9-285, for bundles and contract offerings, there is no maximum rate. (Gillan Direct Testimony, Tr. 223, lines 4-5) What the CLECs overlook is the specific requirements in Section 58-9-285 that LECs maintain a "tariffed flat-rated local exchange service offering for residential customers and for single-line business customers on file with the commission" and that "each regulated product or service" included in a bundled or contract offering be "available on a stand-alone basis under a tariff on file with the commission." These two provisions ensure that a maximum tariffed rate for basic local exchange telephone service continues to exist. It is exactly this tariffed rate that the ORS uses to determine USF support, as confirmed by the testimony at the hearing of ORS's witness, Dawn Hipp. (Hipp Testimony, Tr. 371, line 20-23. See also, Prockish Rebuttal Testimony, Tr. 39, lines 5-8.)

The lodestar of statutory construction principles is "legislative intent." In explaining the importance of legislative intent in the construction of statutory provisions, the South Carolina Supreme Court has stated "all rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute."²⁰ Accordingly, if the words of a statute are clear and unambiguous, then the intent of the legislature is to be gleaned through its plain meaning.²¹

²⁰ See, *Hill v. York County Natural Gas Authority*, 384 S.C. 483, 682 S.E. 2d 809, 812 (2009), citing *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E. 2d 240, 242 (2002).

²¹ See, *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 380 S.C. 349, 669 S.E. 2d 899 (Ct. App. 2008).

To the extent that ambiguities as to the meaning and intent of a statutory term or provision may arise, then the principles of statutory construction are applied to ascertain legislative intent. Under these principles the South Carolina Supreme Court has ruled that “words in a statute must be construed in context.”²² Related statutory provisions should be read as a whole to determine their proper meaning in light of a statute’s purpose in a way that gives meaning to all of the related provisions.²³ In reading the various statutory sections that are relevant to the issue before the Commission in this proceeding, it is evident that nothing in the statutes requires the Commission to exclude basic local service provided in bundled and contract offerings from universal service support. Instead, a plain reading of the statutes suggests that the General Assembly intended the universal service fund to support the costs of providing basic local service in high cost areas regardless of how the service is packaged or marketed for sale to customers.

(Oliver Direct Testimony, Tr. 290, lines 17-20; Hipp, Tr. 365, lines 3-7)

2. Federal law

Section 58-9-280(E) emphasizes that in establishing guidelines for the state USF the Commission is to ensure that the fund is “consistent with applicable federal policies” and “not inconsistent with applicable federal law.” Applicable federal law is set forth in the federal Telecommunications Act at 47 U.S.C. § 254. Section 254(b) enumerates the guiding principles of USF to be, among others, 1) the availability of quality services at reasonable and affordable rates; and 2) access to telecommunications and information services by consumers in rural, insular and high cost areas that are reasonably comparable to the services available in urban areas and at rates reasonably comparable to the rates

²² See, *Southern Mutual Church Insurance Company v. South Carolina Windstorm and Hail Underwriting Association*, 306 S.C. 339, 342, 412 S.E. 2d 377, 379 (1991).

²³ *South Carolina Coastal Conservation League* at 368, 909.

charged in urban areas. In addition, Section 254(f) allows states to implement state USF support to the extent not inconsistent with the FCC's regulations.

As CenturyLink's witness testified, basic services included as part of a bundled offering, or otherwise packaged with other regulated or unregulated services, are not excluded from federal USF support. (Prockish Direct Testimony, Tr. 29, lines 18-20. See, also, Kreutz Surreply Testimony, Tr. 120, lines 14-16.) In fact, as ORS's witness, Ms. Hipp, explains, the FCC has recognized that access lines are not ineligible for federal USF support simply because the lines are used to provide other, even unregulated, services. (Hipp Surreply Testimony, Tr. 362, lines 34-32) Ms. Hipp's position is based on the FCC's ruling in Docket No. 96-45 where it acknowledged continued support for access lines that provide both voice communications and DSL services.²⁴

Clearly, the result the CLECs are advocating is contrary to the FCC's rulings and policies. To be consistent with federal policies, basic local service that is packaged in a bundle with other services, including even unregulated services, should continue to be eligible for state USF support.

3. *Commission Orders*

The Commission's orders developing guidelines for and implementing the state USF are consistent with state statutes and with the direction in state law to maintain consistency with federal policies and laws. As required by the statute, the Commission set the size of the fund as the difference between the costs to provide basic local exchange telephone service and the maximum rate for the service.²⁵ The Commission

²⁴ *In the Matter of Federal-State Joint Board on Universal Service*. Order and Order on Reconsideration, 18 FCC Rcd 15090 (July 14, 2003) at ¶ 13.

²⁵ Generic USF Docket, Order No. 97-753.

conducted lengthy and detailed proceedings to determine the appropriate costs.²⁶ In addition, the Commission identified the maximum rates for basic local service, consistent with the statutory direction for sizing the fund.²⁷ The Commission also followed the statutory direction to “assist with the alignment of prices and/or cost recovery with costs” in determining that the distributions of the fund should be revenue neutral and based on a reduction in the rates for services that provide an implicit subsidy to the local rate. Importantly, the Commission’s USF orders were challenged and upheld by the South Carolina Supreme Court. In affirming the Commission’s Orders the Court emphasized that the “Commissions orders are meticulous in their factual determinations and decisions regarding the appropriate methods for implementing the state USF.”²⁸ Despite the CLECs attempts to pick and choose from provisions of the Commission’s USF orders to prove differently, there is nothing in the orders that prohibits state USF support for basic local exchange telephone service provided as part of bundled or contract offerings.

²⁶ Generic USF Docket, Order No. 98-322.

²⁷ Generic USF Docket, Order No. 97-753; See, Tr. 371 at lines 20-23, where Ms. Hipp explains that the tariffed basic local service rate is imputed when it is part of a bundle.

²⁸ See, *Office of Regulatory Staff v. South Carolina Public Service Commission*, 374 S.C. 46, 54 (2007). Interestingly, the CLECs arguments in this proceeding are eerily akin to the arguments that were raised and rejected by the South Carolina Supreme Court. Although in this proceeding the CLECs focus on bundled and contract offerings, the essence of their arguments appears to be much the same. For instance, in the appeal, the CLECs argued that the USF as established by the Commission is not appropriately sized because the Commission did not appropriately determine the cost requirement, while in this proceeding they argue that the USF is not appropriately sized because allowing bundled lines to be eligible lines does not comply with the maximum rate requirement. Similarly, in the appeal the CLECs argued that the fund designed by the Commission is a barrier to competition, just as they argue here that allowing bundled lines to receive USF support impedes competition. Also, in the appeal they argued that revenues other than the rate for basic local service should be considered in determining the appropriate amount of support from the fund. This argument closely resembles their argument here, which appears to be that since the maximum price of a bundle that includes basic service along with other services is unknown, then basic service included in bundles is precluded from receiving USF support. Clearly this argument rests on the same premise as their earlier unsuccessful argument, that is, that revenues other than basic service revenues should be considered for USF purposes. The CLECs’ arguments failed before the South Carolina Supreme Court, but it seems they are back for another try, this time under the guise of the illogical argument that basic local service somehow changes when it is included as part of a bundle and, therefore, should be excluded from USF support.

*C. Access Lines that are part of bundled or contract offerings
continue to provide basic local exchange service*

Not only do the applicable state and federal laws, as well as the Commission's orders implementing these laws, provide support for the policy that basic local exchange telephone service that is included as part of a bundled or contract offering should continue to receive state USF support, a consideration of the relevant facts also supports this conclusion. As explained below, the function of basic local service remains the same and the costs do not change because basic local service is packaged with other services.

*1. The function of basic service is the same whether provided
on a stand alone basis or as part of a bundled or contract
offering*

Under Section 58-9-285, a bundled offering is an offering of two or more products or services to customers at a single price and a contract offering is any written agreement where any tariffed product or service is offered to any customer at rates, terms, or conditions that differ from those set forth in tariffs. By the very terms of these definitions, the statutes recognize bundled and contract offerings as packages of discrete services. Whether provided on a stand-alone basis or as a part of a bundled or contract offering, the nature of the basic local service remains the same. In her Rebuttal Testimony, CenturyLink's witness, Ann Prockish, provides an apt analogy comparing the inclusion of basic local service as part of a bundle of services to the inclusion of french fries in a fast food value meal. As Ms. Prockish opines, the french fries remain french fries even when they are packaged and sold at a single price along with other foods. Similarly, even when basic local service is packaged and sold along with other services, the basic characteristics of the service remain the same. (Prockish Rebuttal Testimony, Tr. 37, lines 1-14)

It is also significant that, as several ILEC witnesses testified, access lines included in bundled or contract offerings provide all of the elements required for basic local exchange service in the statute. (Prockish Direct Testimony, Tr. 29, lines 4-7; Kreutz Direct Testimony, Tr. 109, lines 1-11; Brown Surreply Testimony, Tr. 184, lines 5-7) As described in this testimony, even when included as part of a bundle, an access line provides all of the services listed in the statutory definition of “basic local exchange telephone service”, specifically, access to basic voice grade local service with touchtone, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing.²⁹

2. *The costs of providing basic local service remain the same whether it is provided as a stand alone service or as part of a bundle*

During the multiple Commission proceedings to develop the state universal service fund, the evidence has demonstrated that the costs to provide basic local exchange service are higher in less dense rural areas than they are in the more densely populated urban areas of the state.³⁰ SCTC’s witnesses Glenn Brown and Keith Oliver discuss in detail how density affects the costs of providing basic local service and how this density was factored into the cost model selected by the Commission for sizing the USF fund.³¹

²⁹ In Order No. 2001-996, adopting USF Administrative Guidelines, the Commission similarly defines “basic local exchange telecommunications” to mean “for single-party residential and single-line business customers access to basic voice grade local service with dual-tone multi-frequency (DTMF) signaling (i.e., Touchtone), access to available emergency services and directory assistance, the capability to access interconnecting carriers, access to dual party relay services, access to operator services, one annual local directory listing, and toll limitation at the request of the low income consumer or in order to prevent further losses by the carrier of last resort, for low-income consumers participating in Lifeline (subject to technical feasibility).”

³⁰ Generic USF Docket, Order No. 98-322, at pp. 24 and 41; Order No. 2001-419, at p. 44.

³¹ Mr. Gillan criticism of the BCPM because the model was not used to determine the costs for the SCTC companies does not apply to CenturyLink, as the model was used to determine CenturyLink’s costs.

(Brown Direct Testimony, Tr. 166-168; Oliver Direct Testimony, Tr. 282, lines 4-11) As both CenturyLink's testimony and SCTC's testimony make clear, these costs do not vary because the access line is sold as part of a bundle of services. (Prockish Direct Testimony, Tr. 29, lines 7-9; Oliver Direct Testimony, Tr. 290, lines 2-20; Oliver Surrebuttal Testimony, Tr. 306-307). As described by the ORS's witness, Ms. Hipp, the revenue neutral mechanism for reducing implicit subsidies and receiving commensurate explicit support through the state USF ensures that these costs of making basic local service available will be recovered by COLRs, regardless of whether the basic local service is provided separately or as part of a bundled or contract offering. (Hipp Reply Testimony, Tr. 357, lines 11-18).

D. Customers would be harmed if USF support were removed from access lines that are provided as part of a bundle

In considering the issue presented in this docket, it is critical for the Commission to understand that if the CLECs arguments were to prevail, South Carolina rural customers inevitably would be harmed. If USF support were removed from lines that provide bundled or contract offerings, the ILECs ability to meet their COLR obligation in high cost rural areas would be in jeopardy. Given the hard choices that ILECs serving high cost rural areas would be forced to make, rural customers either would have fewer choices as ILECs eliminated bundled offerings and decreased investments geared toward providing advanced services or these customers would pay much higher prices for bundled services in their areas.

1. ILECs' COLR obligations would be jeopardized

All of the ILEC parties who participated in the hearing expressed concerns about the effect on their ability to maintain their COLR obligations if the Commission were to determine that basic local exchange telephone service included in a bundled or contract offering were no longer eligible for USF support. (Prockish, Tr. 32, lines 3-18; Kreutz, Tr. 114, lines 11-14; Oliver, Tr. 308, lines 16-20) While under the statute, ILECs were designated the initial COLRs in their service territories, CLECs were given the opportunity to become COLRS and receive USF support, but none has done so to date. (Prockish Direct Testimony, Tr. 24, lines 14-16; Prockish Surrebuttal Testimony, Tr. 51, lines 14-17; Oliver Direct Testimony, Tr. 281, lines 9-11) That no other carrier has voluntarily assumed the COLR responsibility, even with the prospect of receiving state USF support, demonstrates what a daunting undertaking it is.

As CenturyLink's witness Ann Prockish explains, the COLR obligation involves standing ready to provide basic local exchange telephone service to any customer in the ILEC's service territory upon request. It means that ILECs must have facilities available to meet that demand, even if a customer chooses another provider, but later decides to come back to the ILEC. (Oliver Direct Testimony, Tr. 289, lines 19-23) As Mr. Oliver explains, universal service support for the COLR obligation remains the same whether it is met through the provision of basic service only or through the provision of basic service in combination with other services. (Oliver Direct Testimony, Tr. 291, lines 11-14)

As previously described, the current fund was sized first by determining the ILECs' costs for providing universal service in their territories. Next, the ILECs were

required to reduce rates for services that provided implicit support for universal service and the amount of USF monies received were tied to the reduced revenues associated with the reduced rates. Should the Commission decide to remove support for basic service because it is being provided in a bundle, the costs of ensuring universal service will not change, but the explicit support provided through the fund will be reduced. (Brown Direct Testimony, Tr., 173, lines 21-23) Realistically, ILECs will need to assess their financial positions and how the reductions in support will affect their ability to meet their COLR obligations. Though all of the ILEC parties indicated their desire to continue to serve their rural customers, the option provided by the 2009 legislation to choose deregulation and forego USF support in exchange for relief from COLR obligations would necessarily appear more attractive if USF support were reduced without a reduction in the concomitant obligations. (Prockish, Tr. 93, lines 12-14; Kreutz, Tr. 149, lines 1-8; Oliver, Tr. 340, lines 11-14)

2. *Rural customers would have fewer service options*

One option that ILECs would have to consider seriously is to discontinue bundled service offerings, at least in the high cost areas of the state that USF support is targeted to. (Prockish Direct, Tr. 32, lines 20-23; Kreutz Direct, Tr. 113, lines 8-11; Brown Direct, Tr. 175, lines 20-21) Should the ILECs be forced to make this choice, rural customers would certainly suffer from a reduction in available service offerings and their ability to receive the benefits of bundled pricing. (Prockish Rebuttal, Tr. 43, lines 11-16; Brown Direct Testimony, Tr. 176, lines 10-13; Hipp Direct Testimony, Tr. 350, lines 21-22) In fact, it is just this outcome that the CLECs undoubtedly seek, as it would eliminate some of their primary competitors for the provision of bundles of voice, data and video services. (Brown

Direct Testimony, Tr. 158, lines 16-22; Oliver Direct Testimony, Tr. 295, lines 4-6; Hipp Direct Testimony, Tr. 351, lines 1-3)

3. *Universal service would be threatened*

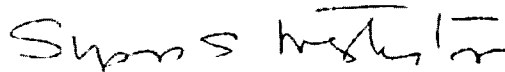
Ultimately, the real victim of a decision by the Commission to eliminate USF support for bundled or contract offerings would be universal service for the state's consumers. (Prockish Direct Testimony, Tr. 24, lines 3-6; Oliver Direct Testimony, Tr. 296, lines 17-22) As stated by Congress and reiterated in the South Carolina Code, the purpose of universal service support is to ensure that comparable services are widely available at reasonable and affordable rates. Consistent with this overarching goal of ensuring available service and affordable rates, the federal law makes clear that a fundamental intent of USF support is to ensure equitable rates and services for consumers in rural and high cost areas. (Prockish Rebuttal Testimony, Tr. 39, lines 14-18; Brown, Tr. 195, lines 7-11; Oliver Surreply Testimony, Tr. 305 line 12 through 306, line 5) The state USF incorporates this purpose through its requirement that the state fund be consistent with federal USF policies. Providing support to basic local exchange service that is included in bundled or contract offerings furthers both federal and state universal service goals by ensuring the widespread availability of basic phone service to all of the state's consumers, even those who live in high cost rural areas, as so many of South Carolina consumers do. (Prockish Rebuttal Testimony, Tr. 42, lines 10-13; Prockish Surreply Testimony, Tr. 51, lines 2-4) Providing basic service as part of a bundle serves universal goals as much, if not more, than providing basic service as a separate offering. The Commission should continue its commitment to South Carolina's largely rural population and find that universal service support should continue to be provided to all

lines that provide basic service to customers, whether the basic service is provided as part of a bundle or as a stand alone service.

III. Conclusion

Continuing to provide USF support for basic local service that is included in bundled or contract offerings is critical for ILECs to be able to meet their universal service obligations to customers in rural and high cost areas and to ensure that the state's goals of universal service continue to be met. The Commission should reject the CLECs' attempt to eliminate this support. Instead, the Commission should affirm that access lines that provide basic service as part of bundled or contract offerings will continue to be eligible lines for the purposes of USF support.

Respectfully submitted this 17th day of February 2010.



Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205
803-771-0555 (phone)
803-771-8010 (fax)
selliott@elliottlaw.us

Susan S. Masterton, Esquire
CenturyLink
315 South Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560 (phone)
850-224-0794 (fax)
susan.masterton@centurylink.com

Counsel for United Telephone
Company of the Carolinas d/b/a
CenturyLink

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2009-326-C

IN RE:)	UNITED TELEPHONE COMPANY
)	OF THE CAROLINAS, LLC d/b/a
State Universal Service Support of Basic)	CENTURYLINK'S PROPOSED
Local Service Included in a Bundled)	ORDER
Service Offering or Contract Offering)	

I. INTRODUCTION

The sole issue before the Commission in this proceeding is whether carriers of last resort (COLRs) should continue to receive state universal service support for basic local service included in a bundled service or contract offering.¹ Our decision involves a review of the substantial evidentiary record encompassed in the transcript of the November 20, 2009, hearing, interpretation of various provisions of the South Carolina Code related to the creation of the state universal service fund (USF) and the regulation of bundled or contract offerings, a review of our decisions implementing the state USF and a review of the applicable federal law.

For the reasons set forth below, the Commission finds that COLRs should continue to receive state USF support for basic local service included as part of bundled or contract offerings.

¹ The title of this docket uses the phrase "basic local service." S.C. Code Ann. § 58-9-280(E) refers to the term "basic local exchange telephone service" which is defined in S.C. Code Ann. § 58-9-10(9). The Commission's Administrative Guidelines, approved in Order No. 2001-996, similarly define the term "basic local exchange telecommunications services." CenturyLink will use the term "basic local service" interchangeably with the similar terms used in the statute and the Administrative Guidelines.

II. PROCEDURAL BACKGROUND

This docket originated as a result of a compromise relating to legislation being considered by the General Assembly during the 2009 session. The Office of Regulatory Staff (ORS), the South Carolina Cable Telecommunications Association (SCCTA) and the South Carolina Telephone Coalition (SCTC) agreed to ask the Commission to consider whether basic local service included in a bundled offering or contract offering was eligible for support from the state USF.² The Commission opened this docket for the purpose of considering this single issue, separately from other USF issues pending in Docket No. 1997-239-C.³

A hearing was held before the Commissioners on November 20, 2009. The following parties submitted pre-filed testimony in this docket and participated in the hearing through presentation of witnesses and cross-examination: United Telephone Company of the Carolinas, LLC d/b/a CenturyLink ("CenturyLink"), Windstream South Carolina, LLC ("Windstream"), ORS, SCTC, and SCCTA, Competitive Carriers of the South, tw telecom of south carolina, llc, Nuvox Communications, Inc. and Sprint Nextel Corporation (referred to collectively as "CLECs").

III. BACKGROUND OF USF IN SOUTH CAROLINA

Competition for local telecommunications service in South Carolina was first introduced through legislation in 1996.⁴ As part of that legislation, the Commission was directed to establish a state universal service fund in furtherance of "South

² Letter from C. Dukes Scott to Charles L.A. Terreni dated May 28, 2009 and filed in Docket No. 1997-239-C.

³ *In Re: Proceedings to Establish Guidelines for an Intrastate Universal Service Fund*, Docket No. 1997-239-C ("Generic USF Docket"). SCCTA previously raised this issue in its Motion to Review Additional USF Issues filed on July 3, 2009 in the Generic USF Docket.

⁴ The enactment of South Carolina's local service deregulation laws was coincident with the enactment of the federal Telecommunications Act of 1996, 47 U.S.C. §§ 152 et.seq.

Carolina's commitment to universally available basic local exchange service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs."⁵ Beginning in 1997 the Commission held several proceedings to establish guidelines for the state USF as required by the legislation. The first proceeding established the size of the USF, directed by S.C. Code Ann. § 58-9-280(E)(4) to be "the sum of the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the maximum amount it may charge for such services."⁶ The second proceeding determined the appropriate cost models and the sizing of the fund based on the costs derived from the models.⁷ In the third proceeding, the Commission resolved various outstanding issues related to the fund and established a "phased-in" implementation of the fund.⁸ In the first phase, the Commission ordered all ILECs to reduce their intrastate access charges by 50% and allowed recovery of these reduced revenues from the fund.⁹ In the second and third phases, COLRs may continue to request additional revenue neutral state USF support in exchange for reductions in rates that contain implicit subsidies. Subsequent to the order establishing the guidelines and in accordance with the phased-in approach adopted by the Commission, the Commission has considered petitions from various ILECs for specific reductions in rates for services that provide implicit support in exchange for additional recovery from the USF fund.¹⁰

⁵ S.C. Code Ann. § 58-9-280(E).

⁶ Generic USF Docket, Order No. 97-753, issued 9-3-97.

⁷ Generic USF Docket, Order No. 98-322, issued 5-6-98.

⁸ Generic USF Docket, Order No. 2001-419, issued 6-6-01. The Commission subsequently approved final Administrative Guidelines to govern implementation of the fund in Order No. 2001-996, issued 10-10-01.

⁹ Order No. 2001-419 at p. 33.

¹⁰ See, e.g., Generic USF Docket Order No. 2003-215, approving additional rate reductions and commensurate state USF support for certain companies represented by the SCTC; Order No. 2004-452, approving further rate reductions and commensurate state USF support for certain companies represented by the SCTC; and Order No. 2004-573, approving additional rate reductions and commensurate state USF funding for United Telephone Company of the Carolinas.

IV. SUMMARY OF TESTIMONY

CLECs presented the testimony of Joseph Gillan to support their position that basic local service included as part of a bundled or contract offering should not be eligible for state USF support.¹¹ Mr. Gillan testified that when included in a bundled or contract offering, the rates for basic local service are deregulated and, therefore, there is no maximum rate, as contemplated by S.C. Code Ann. § 58-9-280(E). (Gillan Direct Testimony, Tr. 222, line 10 through 223, line 5) In addition, Mr. Gillan testified that applying state USF support to basic local service included in bundled or contract offerings is anti-competitive (Gillan Direct Testimony, Tr. 224, lines 18-20) and that it amounts to a tax on urban residents to support lower costs services for rural residents (Gillan Reply Testimony, Tr. 243, lines 3-5).

The COLRs tendered the testimony of five witnesses to support their position that basic local service included as part of a bundled or contract offering is currently eligible for USF support and should continue to be eligible for support.¹² While the COLR witnesses offered a somewhat different perspective on behalf of the companies they represent, the essential testimony of all of the COLR witnesses was the same. The COLRs testified that basic local service included in a bundled or contract offering includes the same functionality as stand alone basic service and the inclusion of basic service in a bundled or contract offering does not change that functionality. (Prockish Direct Testimony, Tr. 29, lines 4-7; Prockish Rebuttal Testimony, Tr. 37, lines 1-13; Kreutz Direct Testimony, Tr. 109, lines 1-11; Brown Surreply Testimony, Tr. 184, lines

¹¹ CLECs' pre-filed the Direct, Reply and Surreply Testimony of Mr. Gillan.

¹² CenturyLink prefiled the Direct, Rebuttal and Surreply Testimony of Ann C. Prockish; Windstream prefiled the Direct and Surreply Testimony of William F. Kreutz; and SCTC pre-filed the Direct and Surreply Testimony of Glenn H. Brown and H. Keith Oliver.

5-7) In addition, they testified that providing state USF support for basic local service included in bundled or contract offerings is consistent with S.C. Code Ann. § 58-9-280(E) authorizing the Commission to establish guidelines for the state USF, as well as Section S.C. Code Ann. § 58-9-285 deregulating bundles and S.C. Code Ann. § 58-9-576 providing for an additional option for further deregulation with a concomitant elimination of state USF funding. (Prockish Direct Testimony, Tr. 33, lines 10-19; Prockish Surreply Testimony, Tr. 46, lines 17-23; Brown Surreply Testimony, Tr. 183-184; Oliver Direct Testimony, Tr. 285, lines 12-21; Oliver Surreply Testimony, Tr. 302, line 15 through 304, line 4) The ILEC witnesses also asserted that providing state USF support for basic service included in bundled or contract offerings meets the requirements of S.C. Code Ann. § 58-9-280(E) for consistency with federal law and policies, because the FCC does not exclude basic service from federal USF support when it is provided along with other services, including even non-regulated services. (Prockish Rebuttal Testimony, Tr. 36, lines 6-12; Kreutz Direct Testimony, Tr. 112, lines 9-17, Kreutz Surreply Testimony, Tr. 120, lines 12-16; Brown Surreply Testimony, Tr. 184, lines 14-16) In addition, providing state USF support for basic local service when it is included in bundled and contract offerings furthers the federal USF policy set forth in 47 U.S.C. §254(b) of ensuring that services and rates available to rural consumers are comparable to the services and rates available to urban consumers. (Prockish Rebuttal Testimony, Tr. 39, lines 14-18; Brown, Tr. 195, lines 7-11; Oliver Surreply Testimony, Tr. 305 line 12 through 306, line 5) Finally, the COLR witnesses offered evidence to show that the elimination of state USF support for basic service included with bundled or contract offerings would harm South Carolina consumers by 1) jeopardizing universal service and the ILECs ability to meet

their COLR obligations (Prockish Direct Testimony, Tr. 32, lines 3-18; Kreutz Direct Testimony, Tr. 114, lines 11-14; Oliver Surreply Testimony, Tr. 308, lines 16-20); and 2) eliminating choices for consumers in rural and high cost areas; or 3) imposing higher rates on those consumers for bundled and contract offerings than would be charged to consumers in urban areas. (Prockish Rebuttal Testimony, Tr. 43, lines 11-16; Brown Direct Testimony, Tr. 176, lines 10-13)

The ORS presented the testimony of Dawn M. Hipp in support of continuing to provide USF support for basic local service included in bundled or contract offerings.¹³ Ms. Hipp testified that current administration of the fund by the ORS is consistent with the Commission's Orders and Administrative Guidelines implementing the fund. (Tr. Hipp, Tr. 364, lines 12-17) In addition, Ms. Hipp explained that the Commission implemented state USF support in a revenue neutral manner, that is, the support received by a carrier is directly commensurate with reductions in rates that the carrier has demonstrated to the Commission provided implicit support for the costs of basic local service. (Hipp Reply Testimony, Tr. 357, lines 11-18) Ms. Hipp also testified that the ORS believes that state law does not exclude COLRS from receiving state USF support for basic service marketed as bundled or contract offerings. (Hipp, Direct Testimony, Tr. 349, lines 7-12; Hipp, Tr. 365, lines 3-7) In the opinion of the ORS, removing support for basic local service included in bundled or contract offerings would harm South Carolina consumers by reducing consumer choice and placing COLRs at an economic disadvantage. (Hipp Direct Testimony, Tr. 350, line 21 through 351, line 3)

¹³ ORS pre-filed the Direct, Reply and Surreply Testimony of Ms. Hipp.

V. FINDINGS OF FACT

1. CenturyLink, Windstream and the companies comprising the SCTC are incumbent local exchange companies as defined in S.C. Code Ann. § 58-9-10(11), which are statutorily designated as carriers of last resort in their service territories. (Tr. 24, 169, 281)

2. CenturyLink, Windstream and the companies comprising the SCTC provide basic local service to rural and high cost customers in South Carolina. (Tr. 24, 273-274)

3. The function of basic local service remains the same whether the service is provided on a stand alone basis or as a part of a bundled or contract offering. (Tr. 37, 48, 109, 184)

4. The costs to provide basic local service remain the same whether the service is provided on a stand alone basis or as a part of a bundled or contract offering. (Tr. 29, 290, 306)

5. Basic local service that is included as part of a bundled or contract offering currently receives state USF support. (Tr. 119, 274, 300, 349)

6. The amount of state USF support a COLR receives is determined on a revenue neutral basis commensurate with reductions in a carrier's rates providing implicit support for basic local service and the concomitant reduction in that carrier's revenues. (Tr. 357)

7. Eliminating support for basic local exchange telecommunications service that is provided as part of a bundled or contract offering may harm the state's consumers by causing COLRs to reduce the availability of bundled or contract offerings. (Tr. 32, 113, 175, 350)

8. Eliminating support basic local exchange telecommunication service that is included as part of a bundled or contract offering may harm the state's consumers by jeopardizing universal service in South Carolina and impeding the ability of COLRs to meet their obligations to provide basic local service at affordable rates to all residential and single-line business customers within their service area. (Tr. 93, 149, 340)

9. Providing USF support for basic local service that is included as part of a bundled or contract offering benefits South Carolina residents by ensuring that basic local service at affordable rates is available to all South Carolina citizens and is in the public interest. (Tr. 51, 112, 196, 274, 290, 297, 304, 306, 365)

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to determine the appropriate policies and procedures for implementing the state USF in accordance with S.C. Code Ann. § 58-9-280(E).

2. CLECs have the burden of proof in this proceeding as the parties affirmatively seeking to have the Commission eliminate state USF support for basic local service included as part of bundled or contract offerings.

3. CLECs have failed to demonstrate that eliminating support for basic local service included as part of bundled or contract offerings is consistent with state laws authorizing the Commission to establish guidelines for a state USF or with federal laws relating to universal service.

4. CLECs have failed to demonstrate that eliminating support for basic local service included as part of bundled or contract offerings is in the best interest of all South Carolina residents, including residents in rural or high cost areas of the state.

5. The current administration of the state USF complies with S.C. Code Ann. § 58-9-280(E), authorizing the Commission to establish the fund.

6. Allowing basic local service that is included in bundled or contract offerings to continue to be eligible for state USF support, is consistent with the purposes of S.C. Code Ann. § 58-9-280(E), which are to continue “South Carolina’s commitment to universally available basic local exchange service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, consistent with federal policies.”

7. There is nothing in S.C. Code Ann. § 58-9-285 deregulating bundles that requires the Commission to find that basic local service provided as part of bundled or contract offerings may no longer receive state USF support.

8. Allowing basic local exchange telecommunications service that is included in bundled or contract offerings to continue to be eligible for state USF support is consistent with 47 U.S.C. § 254 and furthers the federal universal service goals of ensuring that quality services are available at reasonable and affordable rates and that consumers in rural, insular and high cost areas have access to telecommunications and information services that are reasonably comparable to the services available to consumers in urban areas at reasonably comparable rates.

9. Allowing basic local service that is included in bundled or contract offerings to continue to be eligible for state USF support preserves the goals of universal service in South Carolina.

IT IS THEREFORE ORDERED THAT:

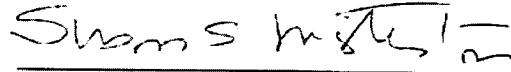
1. Basic local service that is included as part of bundled and contract offerings shall continue to be eligible for state USF support.
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

John E. Howard, Vice Chair

ATTEST:

Respectfully submitted this 17th day of February 2010.

A handwritten signature in dark ink, appearing to read "Scott Elliott", written over a horizontal line.

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205
803-771-0555 (phone)
803-771-8010 (fax)
selliott@elliottlaw.us

Susan S. Masterton, Esquire
CenturyLink
315 South Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560 (phone)
850-224-0794 (fax)
susan.masterton@centurylink.com

Counsel for United Telephone
Company of the Carolinas d/b/a
CenturyLink